83-603

Office-Supreme Court, U.S.
FILED
OCT 2 1983
ALEXANDER L. STEVAS,
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

CHRISTOPHER T. KIRKS, Petitioner

v.

PAMELA S. KIRKS, Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE
SUPERIOR COURT OF WAKE COUNTY, NORTH CAROLINA

Thomas D. Bunn
HATCH, LITTLE, BUNN, JONES, FEW
& BERRY
327 Hillsborough Street
P. O. Box 527
Raleigh, North Carolina 27602
Telephone: (919) 828-5952

Counsel for Petitioner

August 22, 1983

QUESTION PRESENTED

1. Whether the failure of the court of original jurisdiction to properly and accurately certify in the Record on Appeal the narration of testimony presented at the hearing on March 14, 1982, constitutes a violation of Defendant-Petitioner's due process rights as protected by the Fourteenth Amendment of the United States Constitution.

INDEX

Question Presented 1
Opinion Below 2
Jurisdiction 3
Constitutional Provisions Involved . . 3
Statement of the Case. 4
Reason for Granting Writ 8
Conclusion 8
Appendix 10

CONSTITUTIONAL PROVISION

United States Constitution, Amendment XIV

OPINION BELOW

The opinion of the Supreme Court of North Carolina, the North Carolina Court of Appeals, and the Wake County Superior Court appear in the Appendix hereto.

JURISDICTION

The judgment of the North Carolina Supreme Court dated July 7, 1983, was entered on July 13, 1983, and this petition for certiorari was filed within 90 days of that date. The Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS

United States Constitution Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a domestic action originally begun on March 30, 1978. A hearing upon Plaintiff-Respondent's motion for an increase in child support and to require Defendant-Petitioner to pay for psychological services with respect to the minor child born during the marriage of the parties was held on May 14, 1982, before the Honorable Philip O. Redwine and upon agreement of the parties the testimony at the hearing was not recorded

by a court reporter. After the entry of the Order on the date of the hearing, your Defendant-Petitioner gave Notice of Appeal to the North Carolina Court of Appeals.

On the 10th day of January, 1983, the Defendant-Petitioner filed his proposed Case on Appeal in the Office of the Clerk of Superior Court, including a narration of the testimony of the witnesses at the hearing. Shortly thereafter, on the 3rd day of February, 1983, the Plaintiff-Respondent filed an objection to Defendant-Petitioner's proposed Case on Appeal, asking, among other things, that the narration of testimony be changed to conform to the narration proposed in Plaintiff-Respondent's Objection.

By Order of Judge Redwine dated March 10, 1983, the narration proposed by Plaintiff-Respondent was ordered certified as part of the Case on Appeal, completely disregarding and omitting the account of the testimony proposed by Defendant-Petitioner.

The narration as ordered by Judge Redwine was certified by the Clerk of Superior Court as part of the approved Case on Appeal on March 10, 1983, and the certified Case on Appeal was filed with the Office of the Clerk of the North Carolina Court of Appeals on the same day.

Defendant-Petitioner filed with the North Carolina Court of Appeals a Petition for Writ of Certiorari seeking review of the decision by Judge Redwine

certifying the narration of testimony on April 22, 1983, which was denied on May 9, 1983.

Defendant-Petitioner then filed a Petition for Discretionary Review of the matter with the Supreme Court of North Carolina which was also denied on July 13, 1983.

The question of a possible violation of your Petitioner's Fourteenth Amendment rights was first raised in the Motion for a Writ of Certiorari filed with the North Carolina Court of Appeals, and later in the Petition for Discretionary Review filed with the North Carolina Supreme Court, the results of which are set out above.

REASON FOR GRANTING THE WRIT

Defendant-Petitioner has been deprived of his property rights without due process of law and has been denied the equal protection of the laws as protected by the Fourteenth Amendment to the Constitution of the United States. Without an accurate narration of the testimony as presented at the hearing, the Court of Appeals could not accurately determine whether the Trial Court Judge abused his discretion in entering his Order.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the

judgment and opinion of the North Carolina Supreme Court.

Respectfully submitted,

Thomas D. Bunn
HATCH, LITTLE, BUNN, JONES, FEW & BERRY
327 Hillsborough Street
P. O. Box 527
Raleigh, North Carolina 27602
Telephone: (919) 828-5952

Counsel for Petitioner

August 22, 1983

NO. 260P83 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

PAMELA S. KIRKS)
)
v)
)
CHRISTOPHER T. KIRKS)

****

ORDER DENYING PETITION FOR DISCRETIONARY REVIEW (8310DC278)

****

Upon consideration of the petition filed in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 7th day of July 1983.

s/Frye, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 13th day of July 1983.

s/J. Gregory Wallace
Clerk of the Supreme Court

Copy to:

North Carolina Court of Appeals
Hatch,Little,Bunn,Jones, Few & Berry
Attorneys at Law
VanCamp, Gill & Crumpler
Attorneys at Law

NO. 8310DC278 TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

PAMELA S. KIRKS,
Plaintiff,

vs.

CHRISTOPHER T. KIRKS,
Defendant.

****

Wake County
No. 78CVD1458

****

ORDER

****

The petition filed in this cause on the 22nd day of April, 1983, and designated Petition for Writ of Certiorari is denied.

By order of this Court this 9th day of May, 1983.

(No signature included)

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
78 CVD 1458

PAMELA S. KIRKS, Plaintiff,	:	
vs.	:	ORDER
CHRISTOPHER T. KIRKS, Defendant.	:	

THIS CAUSE coming on to be heard upon the Motion of the Plaintiff-Appellee to change the contents of the Defendant-Appellant's Proposed Record on Appeal, and the Court, having studied the file and heard from the attorneys of record, finds as follows:

1. That the relief prayed for in Paragraph 1 is denied.

2. That the relief prayed for in Paragraph 2 is denied with the exception of Subsections (c), (d) and (g).

3. That the relief prayed for in Paragraph 3 is denied.

4. That the relief prayed for in Paragraph 4 is denied.

5. That the relief prayed for in Paragraph 5 is denied.

6. That the relief prayed for in Paragraph 6 is denied.

7. That the relief prayed for in Paragraph 7 is allowed.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Case on Appeal be conformed to the findings of this Order.

This the 10th day of March, 1983.

s/Philip O. Redwine
Judge Presiding

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

CHRISTOPHER T. KIRKS, Petitioner

v.

PAMELA S. KIRKS, Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE
SUPREME COURT OF THE STATE OF NORTH CAROLINA

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of August, 1983, three copies of this Petition for Writ of Certiorari were mailed, postage prepaid, to William B. Crumpler, P. O. Box 106, Raleigh, North

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

CHRISTOPHER T. KIRKS, Petitioner

v.

PAMELA S. KIRKS, Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE
SUPREME COURT OF THE STATE OF NORTH CAROLINA

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of August, 1983, three copies of this Petition for Writ of Certiorari were mailed, postage prepaid, to William B. Crumpler, P. O. Box 106, Raleigh, North

Carolina 27602, Counsel for the Respondent. I further certify that all parties required to be served have been served.

Thomas D. Bunn
HATCH, LITTLE, BUNN, JONES, FEW & BERRY
327 Hillsborough Street
P. O. Box 527
Raleigh, North Carolina 27602
Telephone: (919) 828-5952

Counsel for Petitioner

August 22, 1983